
By: **Delegate Menes (Special Committee on Drug and Alcohol Abuse) and
Delegates Anderson, Boschert, Bronrott, Burns, Dumais, Eckardt,
Hennessy, Kelley, Nathan-Pulliam, and Petzold**

Introduced and read first time: January 28, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Probation before Judgment - Driving While Impaired by or under the**
3 **Influence of Alcohol and Drugs - Evaluation Required**

4 FOR the purpose of requiring a court, before imposing a period of probation before
5 judgment in a case where judgment is being stayed for certain alcohol- or
6 drug-related driving offenses, to order the Department of Health and Mental
7 Hygiene to evaluate the defendant as to whether the defendant needs or would
8 benefit from certain treatment; requiring the court to review the evaluation
9 prior to imposing a period of probation; and generally relating to probation
10 before judgment in cases involving driving while impaired by or under the
11 influence of alcohol and drugs.

12 BY repealing and reenacting, with amendments,
13 Article - Criminal Procedure
14 Section 6-220
15 Annotated Code of Maryland
16 (2001 Volume and 2003 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article - Transportation
19 Section 21-902
20 Annotated Code of Maryland
21 (2002 Replacement Volume and 2003 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article - Criminal Procedure**

25 6-220.

26 (a) In this section, "custodial confinement" means:

1 (1) home detention;

2 (2) a corrections options program established under law which requires
3 the individual to participate in home detention, inpatient treatment, or other similar
4 program involving terms and conditions that constitute the equivalent of
5 confinement; or

6 (3) inpatient drug or alcohol treatment.

7 (b) (1) When a defendant pleads guilty or nolo contendere or is found guilty
8 of a crime, a court may stay the entering of judgment, defer further proceedings, and
9 place the defendant on probation subject to reasonable conditions if:

10 (i) the court finds that the best interests of the defendant and the
11 public welfare would be served; and

12 (ii) the defendant gives written consent after determination of guilt
13 or acceptance of a nolo contendere plea.

14 (2) Subject to paragraphs (3) and (4) of this subsection, the conditions
15 may include an order that the defendant:

16 (i) pay a fine or monetary penalty to the State or make restitution;
17 or

18 (ii) participate in a rehabilitation program, the parks program, or a
19 voluntary hospital program.

20 (3) Before the court orders a fine, monetary penalty, or restitution, the
21 defendant is entitled to notice and a hearing to determine the amount of the fine,
22 monetary penalty, or restitution, what payment will be required, and how payment
23 will be made.

24 (4) Any fine or monetary penalty imposed as a condition of probation
25 shall be within the amount set by law for a violation resulting in conviction.

26 (5) As a condition of probation, the court may order a person to a term of
27 custodial confinement or imprisonment.

28 (c) (1) When the crime for which the judgment is being stayed is for a
29 violation of § 21-902 of the Transportation Article or § 2-503, § 2-504, § 2-505, §
30 2-506, or § 3-211 of the Criminal Law Article, the court shall [impose]:

31 (I) PRIOR TO IMPOSING a period of probation, ORDER THE
32 DEPARTMENT OF HEALTH AND MENTAL HYGIENE TO EVALUATE THE DEFENDANT IN
33 ACCORDANCE WITH § 8-505 OF THE HEALTH - GENERAL ARTICLE; AND

34 (II) AFTER REVIEW OF THE EVALUATION UNDER ITEM (I) OF THIS
35 PARAGRAPH, IMPOSE A PERIOD OF PROBATION and, as a condition of the probation:

1 [(i)] 1. shall require the defendant to participate in an alcohol or
2 drug treatment or education program approved by the Department of Health and
3 Mental Hygiene, unless the court finds and states on the record that the interests of
4 the defendant and the public do not require the imposition of this condition; and

5 [(ii)] 2. may prohibit the defendant from operating a motor vehicle
6 unless the motor vehicle is equipped with an ignition interlock system under § 27-107
7 of the Transportation Article.

8 (2) When the crime for which the judgment is being stayed is for a
9 violation of any provision of Title 5 of the Criminal Law Article, the court shall impose
10 a period of probation and, as a condition of probation, require the defendant to
11 participate in a drug treatment or education program approved by the Department of
12 Health and Mental Hygiene, unless the court finds and states on the record that the
13 interests of the defendant and the public do not require the imposition of this
14 condition.

15 (d) Notwithstanding subsections (b) and (c) of this section, a court may not
16 stay the entering of judgment and place a defendant on probation for:

17 (1) a violation of § 21-902 of the Transportation Article or § 2-503, §
18 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article, if within the
19 preceding 5 years the defendant has been convicted under § 21-902 of the
20 Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the
21 Criminal Law Article, or has been placed on probation in accordance with this section,
22 after being charged with a violation of § 21-902 of the Transportation Article or §
23 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article;

24 (2) a second or subsequent controlled dangerous substance crime under
25 Title 5 of the Criminal Law Article; or

26 (3) a violation of any of the provisions of §§ 3-303 through 3-307 of the
27 Criminal Law Article for a crime involving a person under the age of 16 years.

28 (e) (1) By consenting to and receiving a stay of entering of the judgment as
29 provided by subsections (b) and (c) of this section, the defendant waives the right to
30 appeal at any time from the judgment of guilt.

31 (2) Before granting a stay, the court shall notify the defendant of the
32 consequences of consenting to and receiving a stay of entry of judgment under
33 paragraph (1) of this subsection.

34 (f) On violation of a condition of probation, the court may enter judgment and
35 proceed as if the defendant had not been placed on probation.

36 (g) (1) On fulfillment of the conditions of probation, the court shall
37 discharge the defendant from probation.

38 (2) The discharge is a final disposition of the matter.

